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Rethinking Ethiopia's Bilateral Investment Treaties: A Comparative Analysis with Emerging Global Models

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Abstract

This reflection provides a critical, comparative analysis intended to inform the development of a coherent Ethiopian model Bilateral Investment Treaty (BIT), grounded in best practices and aligned with the nation's development priorities. It examines Ethiopia's bilateral investment treaties (BITs) through a comparative perspective, drawing upon analyses of treaties Ethiopia has signed with Libya, Algeria, Sudan, Finland, Sweden, China, and Egypt to attract Foreign Direct Investment (FDI). These are contrasted with model BITs from South Africa, India, Ghana, Brazil, Kenya, Morocco, and China. The discussion underscores that, despite Ethiopia's extensive engagement with BITs, the country's treaty practices remain fragmented, lacking coherence and a national model BIT to ensure consistency in substance, structure, and policy orientation. These limitations have led to agreements that, often variably and disproportionately, privilege investor protections while inadequately safeguarding regulatory space and public-interest objectives. Consequently, this reflection offers insights to improve Ethiopia's ongoing bilateral treaty revisions and reforms, ensuring alignment with contemporary international investment standards.

Keywords

BITs; FDI; Investor Protection; Model BITs; National Interest; Ethiopia

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1. Introduction

BITs are pivotal instruments in the architecture of international economic relations, particularly for developing countries aiming to attract FDI. These treaties are formal agreements between two countries that provide guarantees and protections to investors, such as national treatment, most-favoured-nation treatment, protection against expropriation, and access to investor-state dispute settlement (ISDS) mechanisms.[1] For many developing nations, BITs signal a commitment to a stable investment climate, offering legal certainty and assurance to foreign investors wary of domestic legal unpredictability. This framework is based on the assumption that reduced risks and increased legal protections will enhance investor confidence and ultimately boost FDI inflows.[2]

Ethiopia's approach to BITs reflects this broader trend among developing countries. Seeking to foster economic growth and industrialisation, Ethiopia has signed over 40 BITs, although only a portion have entered into force.[3] These treaties serve to signal Ethiopia's openness to investment and its desire to integrate into the global economy. In particular, BITs are seen as a way to attract capital necessary for infrastructure development, technology transfer, managerial skill transfer, and job creation, among others. The Ethiopian government has often viewed BITs as tools to bridge financing gaps and offset some of the risks perceived by foreign investors, especially given Ethiopia's transitional political and legal systems.[4]

However, Ethiopia's experience also reflects the challenges and limitations associated with traditional BIT frameworks. Many of the country's existing BITs heavily favour investor rights while offering minimal protection for the regulatory autonomy of the state. Provisions such as broad definitions of expropriation and vague clauses on fair and equitable treatment can expose Ethiopia to legal challenges when it enacts public-interest regulations, leading to what scholars term "regulatory chill".[5] The ISDS mechanism, often embedded in BITs, allows foreign investors

[1] R Dolzer and C Schreuer, *Principles of International Investment Law* (Oxford University Press, 2012).

[2] UNCTAD, *World Investment Report 2021: Investing in Sustainable Recovery* (United Nations Conference on Trade and Development, 2021).

[3] UNCTAD Investment Policy Hub, 'Ethiopia: International Investment Agreements' [https://investmentpolicy.unctad.org/] (https://investmentpolicy.unctad.org/) accessed 2025.

[4] LNS Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (Cambridge University Press, 2012).

5 Van Harten, G. (2007). *Investment Treaty Arbitration and Public Law*. Oxford University Press. In fact, this chilling effect has been observed in Philip Morris v. Uruguay (ICSID Case No. ARB/10/7), where Uruguay faced a $25 million claim for its tobacco control measures. Although the tribunal upheld Uruguay's regulatory right, the case exemplifies the financial and legal pressures that can dissuade similar public-interest interventions.

to bypass domestic courts and seek arbitration abroad, a process that is frequently costly,[6] opaque, and perceived as biased in favour of investors[7]

These imbalances are increasingly prompting countries around the world to revise their investment treaty practices. Modern model BITs adopted by countries such as India (2016), South Africa (2010s), and the Netherlands (2019) include reforms aimed at rebalancing investor rights with state responsibilities and public-interest considerations. These newer treaties emphasise sustainable development, corporate accountability, and the state's right to regulate in the interests of health, the environment, and human rights.[8] For example, these model BITs reflect a deliberate shift away from the broad, investor-dominant treaties of the past toward more calibrated and policy-sensitive instruments. What makes them "modern" is not merely their recency, but their effort to introduce precision, balance, and accountability into investment governance. They narrow and clarify key standards, such as the definition of investment and the scope of fair and equitable treatment, thereby reducing interpretive ambiguity and limiting expansive claims. At the same time, they rebalance dispute settlement by restricting ISDS through requirements such as exhaustion of local remedies and a preference for domestic and state-to-state mechanisms, thereby curbing excessive litigation risks.[9]

Crucially, these models explicitly safeguard the state's right to regulate in the public interest, embedding provisions on environmental protection, labour standards, and sustainable development, and in some cases introducing investor obligations. In this way, modern BITs do not abandon investor protection but reposition it within a more balanced framework that aligns legal certainty with regulatory autonomy. This evolution provides an important benchmark for assessing and reforming Ethiopia's BIT regime, which remains largely anchored in older, asymmetrical treaty practices. Ethiopia can benefit from such models by developing its own updated model BIT

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6 In *Vattenfall v. Germany* (II) (ICSID Case No. ARB/12/12), Germany faced a multi-billion-euro arbitration over its nuclear phase-out, reflecting the substantial financial stakes and unpredictability of ISDS outcomes, even for high-income states with robust legal systems.

7 Supra note 1.

8 Ibid.; African Union. *Pan-African Investment Code*. (African Union Commission: Addis Ababa: 2016)

9 In *CSOB* v. *Slovakia* (ICSID Case No. ARB/97/4), the investor used creative corporate structuring to gain access to ISDS, demonstrating how broad investment definitions facilitate treaty shopping and expose host states to strategic claims.; *Loewen* v. *United States* (ICSID Case No. ARB(AF)/98/3) exposed how ISDS can bypass national legal systems, as the tribunal accepted jurisdiction even though the investor had not exhausted U.S. remedies, raising questions about access to justice and domestic institutional trust.

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that aligns with its development priorities, human rights protections,[10] including industrial and labour protection policy, environmental sustainability, and inclusive growth. Besides, the existing scholarship has not adequately addressed this inconsistency nor systematically examined how Ethiopia's treaty regime diverges from emerging global approaches that seek to recalibrate the balance between investor rights and state responsibilities. Hence, a comparative assessment becomes necessary to draw normative and practical lessons from jurisdictions that have developed modern, policy-aligned model BITs.

Accordingly, this reflection contributes to this discourse by offering a critical, comparative analysis to inform the development of a coherent Ethiopian model BIT grounded in best practices and aligned with national development priorities. It interrogates the domestic legal inconsistencies, characterises Ethiopia's BITs and situates them within the broader evolution of international investment law. Despite Ethiopia's extensive engagement with BITs, this reflection highlights that the country's treaty practice remains fragmented, lacking coherence and a guiding national model BIT to ensure consistency in substance, structure, and policy orientation. This absence has resulted in agreements that, variably and often disproportionately, privilege investor protections while insufficiently safeguarding regulatory space and public-interest objectives.

Structurally, in the subsequent sections, firstly, this reflection highlights the conceptual and functional foundations of BITs. Then, it analyses the inconsistencies and structural shortcomings within Ethiopia's existing treaties, followed by a comparative evaluation of selected contemporary models. Finally, it draws conclusive insights into the question of what ought to be, proposing targeted legal reforms to enhance coherence, policy space, and developmental alignment

2. Investor's Protection and Associated Risks in BITs

BITs are international agreements that establish legally binding commitments between two states to protect and promote investments made by investors from one country in the territory of the other. These treaties are grounded in key investment principles, including protection against expropriation without compensation, fair and equitable treatment, full protection and security, and guarantees of national and most-favoured-nation (MFN) treatment. BITs also commonly include

[10] In *Urbaser* v. *Argentina* (ICSID Case No. ARB/07/26), the tribunal acknowledged that investors might bear human rights responsibilities, signaling a shift toward integrating sustainable development into investment governance, albeit still at a nascent stage.

provisions for the free transfer of funds and access to international arbitration through ISDS. These principles are intended to reduce non-commercial risks and provide a predictable legal framework, which is essential for long-term investment planning.

Investors rely on BITs because they offer enforceable legal assurances that extend beyond domestic law, especially in countries where judicial systems may lack independence or policy environments are perceived as volatile. By codifying internationally recognised standards of investor protection, BITs help mitigate risks such as discriminatory treatment, arbitrary regulatory changes, or politically motivated expropriation. The availability of ISDS mechanisms further strengthens investor confidence by allowing disputes to be resolved through neutral international arbitration rather than relying solely on domestic courts. In this way, BITs serve as crucial instruments for investors seeking security, transparency, and legal recourse in foreign markets.

However, signing BITs without calculating their cost and considering a well-rounded national interest can be very risky. Globally, the literature on the trend in BITs and their experiences highlights that national-interest-unconscious BITs pose risks, including enabling investor dominance, undermining national sovereignty, weakening bargaining power, causing severe consequences such as costly arbitration exposure, eroding the state's regulatory policy space, and legal fragmentation. Hereunder, Table 1 digests and introduces these risks, along with their consequences and sources.

No	Risk	Consequence	Source
1	Investor dominance	Overly investor-friendly terms	UNCTAD[11]
2	ISDS exposure	Costly and unpredictable arbitration	Poulsen[12]
3	Loss of policy space	Inflexibility in national regulation[13]	Cotula[14]
4	Legal incoherence	Treaty shopping and fragmentation	UNCTAD[15]
5	Weak bargaining	Unfavourable terms for host states	Van Harten[16]

[11] Supra note 2.
[12] Supra note 4.
[13] L Cotula, *The Great African Land Grab? Agricultural Investments and the Global Food System* (2013).
[14] Ibid
[15] Supra note 2.
[16] Supra note 5.

Table 1. Risks and Consequences of National-Interests Unconscious BITs

These consolidated key risks and their consequences, embedded in the national-interest unconscious BITs under Table 1, also resonate with Ethiopia's practical context, where reliance on traditional BIT frameworks prevails. As Ethiopia's traditional BITs experience indicates, the broadly framed, investor-oriented provisions tend to generate these risks and consequences, mainly disproportionate investor protection, the state's exposure to costly and uncertain arbitration, and generic investor–state dispute settlement. The Table further shows that rigid treaty commitments constrain regulatory autonomy, leading to a loss of policy space, and that overlapping treaty obligations contribute to legal incoherence and facilitate treaty shopping. It also reflects the structural limitations in negotiating capacity that often result in unfavourable treaty terms. Generally, while the Table highlights the systemic nature of these risks and consequences, it also underscores the need for a more coherent and strategically guided approach in Ethiopia's BIT practice.

3. Comparative Evaluation of Ethiopia's BITs

A review of Ethiopia's BITs reveals a consistent pattern of broadly defined investment protections that prioritise investor interests over state regulatory authority. Treaties signed with countries such as Libya, Algeria, Sudan, Finland, Sweden, China, and Egypt provide expansive rights to investors, frequently without corresponding obligations or mechanisms that protect the public interest.[17] These agreements often lack provisions that address sustainable development, labour rights, and environmental protection.

For instance, Workers in Ethiopia's industrial parks, particularly in the textile and garment sectors, have raised persistent complaints about low wages, poor working conditions, and limited labour rights protections. Many employees earn wages far below a living income, often struggling to meet basic needs such as food, housing, and transportation.[18] Working environments are frequently described as harsh, with long hours, minimal breaks, and inadequate occupational safety measures.[19] Reports also indicate a lack of effective mechanisms for collective bargaining and

[17] Supra note 2.
[18] ILO, *Wages and Working Conditions in Ethiopia's Garment Industry* (2021). Indeed, some manufacturing companies, in particular garment factories in various industrial parks across the country, have attempted to ameliorate the situation by providing one meal per day to prevent workers from fainting or collapsing on the job.
[19] AFLS, *African Labour Research Network Report on Industrial Parks in Ethiopia* (2020).

grievance resolution, leaving workers vulnerable to exploitation and job insecurity.[20] These issues are compounded by weak enforcement of labour laws and limited oversight by regulatory bodies, raising concerns about the sustainability and ethical foundations of Ethiopia's industrial development model.[21] In fact, the way BITs are negotiated and the space given for labour rights also contribute to the situation on the ground.

By contrast, model BITs adopted by South Africa, India, Ghana, Brazil, Kenya, Morocco, and China, among others, demonstrate a shift toward balancing investment protection with the developmental needs of host countries. South Africa's model, for instance, replaces ISDS with state-to-state arbitration and enhances domestic remedies.[22] India's model limits the definition of investment and mandates the exhaustion of local legal avenues before resorting to international arbitration.[23] Brazil's Cooperation and Facilitation Investment Agreements emphasise dispute prevention, ombudsperson roles, and joint committees, eschewing traditional ISDS frameworks.[24] Morocco's model BIT explicitly integrates human rights, gender equality, and sustainable development into its core text.[25] These models collectively emphasise regulatory flexibility, public accountability, and socio-economic priorities alongside investment facilitation.

China's newer model BITs reflect its strategic need to safeguard regulatory autonomy while continuing to project itself as a stable investment destination.[26] Ghana's model BIT promotes policy coherence with development objectives and strengthens state control over investment-related regulations.[27] Kenya's model similarly prioritises national judicial systems and introduces environmental and social responsibilities for investors.[28] These provisions offer valuable lessons for Ethiopia's treaty reform process.

4. Structural Shortcomings in Ethiopia's BITs

[20] Ethio-Trade Union Confederation, *Annual Labour Rights Report*.
[21] UNCTAD, *World Investment Report – Special Focus on Ethiopia* (2022).
[22] Republic of South Africa, South Africa Model BIT (2011).
[23] Government of India, Ministry of Finance, India Model BIT (2016).
[24] Brazil Cooperation and Facilitation Investment Agreements (2015).
[25] Kingdom of Morocco, Morocco Model BIT (2019).
[26] China Model BIT, 2009
[27] Ghana Model BIT, 2008
[28] Kenya Investment Promotion and Protection Agreement (2020).

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Ethiopia's BITs exhibit significant structural deficiencies. First, they provide inadequate assurance of the state's regulatory autonomy. The absence of clear and explicit language affirming the government's right to regulate for public interest undermines Ethiopia's capacity to enforce health, safety, environmental, and labour standards. Second, many of Ethiopia's BITs adopt vague and overly broad definitions of key concepts such as "investment" and "expropriation," resulting in legal uncertainty and an increased likelihood of investor claims against regulatory actions.[29]

Third, the dispute settlement mechanisms employed in these treaties frequently rely on ISDS without requiring the investor to first pursue remedies in domestic courts. This not only sidelines the national judiciary but also raises concerns about sovereignty and access to justice. Fourth, there is a notable absence of modern treaty provisions linking investment to sustainable development. Ethiopian BITs generally fail to address labour rights, environmental responsibilities, or corporate accountability, all of which are now considered essential elements of equitable investment governance, as noted in the South Africa Model BIT[30] and the Morocco Model BIT.[31]

Domestically, Ethiopia's investment regime, outlined in Proclamation No. 1180/2020 and Regulation No. 474/2020, governs both domestic and foreign investment, offering post-establishment national treatment, protection against expropriation except for public purposes with fair compensation, and guarantees such as profit repatriation, non-discrimination, and access to dispute resolution, including international arbitration under specific conditions. The government plays an active role in promoting investment by offering a range of incentives, including tax holidays, customs duty exemptions, and access to industrial parks, to attract capital and technology. Certain sectors remain subject to investment screening and prior approval, as listed in Regulation 474/2020. Despite ongoing political instability and legal unpredictability, the government continues to position itself as a facilitator of private-sector growth, seeking to foster a conducive investment environment through institutional reforms and policy liberalisation.

5. Concluding Remarks: Way forward for Ethiopia's Investment Climate

Ethiopia stands at a critical juncture in its investment treaty policy. The comparative analysis of its existing BITs with contemporary model agreements reveals significant gaps that could undermine

[29] Supra note 4.
[30] Supra note 22.
[31] Supra note 25.

national development priorities and regulatory sovereignty. Reforming these treaties by adopting modern standards/ Model BIT will enable Ethiopia to attract sustainable investment while safeguarding its right to pursue equitable and inclusive economic growth. Such a transformation demands not only legal drafting expertise but also strong political will and a clear vision for national development. This reflection highlights the critical need to revise Ethiopia's BIT framework, focusing on aligning it with current international standards while serving national development goals, including the following:

First, the definition of investment should be narrowed and clearly defined to include only direct investments with a genuine economic contribution. This will mitigate speculative claims and ensure greater legal precision, as set out in India's 2016 Model BIT.[32] A comprehensive definition of investment, for instance, extends safeguards to an extensive array of assets, potentially including speculative capital, thereby augmenting the exposure of the host State. Conversely, a more restrictive, criteria-based approach restricts protection to investments that are long-term, risk-bearing, and linked to development objectives. For developing nations, adopting a structured and narrower definition effectively preserves regulatory sovereignty while ensuring the protection of authentic investment inflows.

Second, it is critical to affirm the state's right to regulate in pursuit of public interest objectives. New BITs should incorporate general exceptions or preambles that explicitly recognise the primacy of health, environmental protection, labour rights, and social welfare, as set out in the 2011th Model BIT of South Africa.[33]

Third, Ethiopia might want to rethink including ISDS in future treaties. When resolving disputes, it's often better to prioritise state-to-state arbitration or mechanisms that encourage investors to try all domestic remedy options first before moving to international arbitration.

Fourth, all future BITs should be harmonised with Ethiopia's national development policies, investment proclamation/law, and international obligations, such as the Sustainable Development Goals (SDGs) and the UN Guiding Principles on Business and Human Rights.[34] Treaties should

[32] Supra note 23.
[33] Supra note 22.
[34] UN Guiding Principles on Business and Human Rights (endorsed 2011 UN Human Rights Council) (UNGPs). The UNGPs provide a global framework for preventing and addressing human rights abuses linked to business activity. Built on three pillars, including the state duty to protect, the corporate responsibility to respect, and access to remedy,

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embed commitments to environmental sustainability, equitable development, gender inclusion, and responsible business conduct, as observed in the 2019th Model BIT of Morocco.[35]

Fifth, Ethiopia should establish robust institutional oversight mechanisms, such as joint committees and ombudsmen, to monitor treaty implementation, facilitate dialogue between stakeholders, and address potential disputes early. These mechanisms enhance transparency and encourage preventative diplomacy.[36]

Finally, Ethiopia must strive for regional and continental alignment. BITs should be compatible with the African Continental Free Trade Area (AfCFTA) Investment Protocol and the African Union Model BIT, enabling Ethiopia to benefit from collective bargaining power and regional coherence.

Accordingly, Ethiopia should consider reviewing and renegotiating its existing BITs in line with international best practices. Adopting a comprehensive BIT model that incorporates development objectives, safeguards regulatory space, and ensures transparency and public participation in treaty-making would represent a significant policy advancement.[37] Moreover, Ethiopia should strengthen its domestic institutions to manage investment disputes effectively and explore regional frameworks like the Pan-African Investment Code, which offers an alternative investment governance model rooted in African priorities.[38] This reform path would allow Ethiopia to retain the benefits of foreign investment while minimising the policy constraints imposed by outdated BITs.

Conflict of Interest

The author declares no conflict of interest.

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the UNGPs clarify that while states must safeguard human rights through laws and enforcement, businesses are expected to avoid infringing on rights and address harms they cause or contribute to. Though non-binding, the UNGPs have become the international standard for responsible business conduct and are widely referenced in national action plans, corporate policies, and regulatory frameworks.

[35] Supra note 25.

[36] Supra note 4.

[37] Supra note 5.

[38] African Union. *Pan-African Investment Code (*2016).